

ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application, and for the personal interview conducted on November 17, 2009. The application has been carefully reviewed in light of the Office action and interview, and favorable reconsideration of the subject application is requested in view of the comments and/or amendments made herein.

Claims 35, 38, 40-44, 48-54, 56, 59-61, 63-65, and 69-85 remain in this application. Claims 1-34, 36-37, 39, 45-47, 55, 57-58, 60, 62, and 66-68 have been canceled. Claims 40, 48, 61 and 69 have been withdrawn as the result of an earlier restriction requirement, and applicant retains the right to present those claims in a divisional application. New claims 90-92 are added without adding any new matter.

The Examiner issued a restriction to claims 73-77, and 79-83, arguing that the claims are not directed to subject matter previously elected by applicant. As pointed out to the Examiner at the personal interview, these claims recite subject matter that was previously elected. For example, new claim 81 recites subject matter that was previously found in elected claim 39. The Examiner agreed at the personal interview to reconsider the restriction requirement in light of this discussion.

Claims 35, 38, 41, 42, 43, 44, 49-54, 56, 59, 63-65, 70-72, 78, and 84-89 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. This rejection was also discussed at the personal interview, where the Examiner argued that there was no support for the broader claims, and where it was pointed out that the specification provided specific example embodiments that the broader claims read upon. Furthermore, it is noted that broad claims of similar scope were provided with the as-filed application, and it is further noted that the claims of an application are considered part of the specification, and thus, in this case, are self-enabling. Nevertheless, the Examiner said that he would reconsider this rejection in light of proposed amendments that were discussed during the interview, and which are discussed in more detail below. Furthermore, applicant asserts that the application

describes the method in sufficient detail in order to allow one skilled in the art to practice the invention, in particular when one considers paragraphs 0022-0025 and 0046-0049 of the published application, which clearly describes the method of detecting the boundary of the items using measured data (with specific reference to Figure 6). Accordingly, applicant requests that the rejection be withdrawn.

Claims 35 and 86 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite. Those claims have been amended, making the rejection moot.

Claims 35, 38, 41, 42, 49-52, 56, 59, 63, 70, 71, 78, and 84-89 were rejected under 35 U.S.C. §102(b) as being anticipated by Whitehouse (WO 99/47885). Claims 43-44, and 64-65 were rejected under 35 U.S.C. §103(a) as being unpatentable over Whitehouse in view of Van Devanter *et al.* (U.S. 4,557,019). Claim 53 was rejected as being unpatentable over Whitehouse in view of Antonissen (US 4,572,044). Claims 54 and 72 were rejected as being unpatentable over Whitehouse. Claims 45 and 66 were rejected as being unpatentable over the combination of Whitehouse, Van Devanter, and Antonissen. For the following reasons, the rejections are respectfully traversed.

As discussed at the personal interview, applicant believes that the Whitehouse reference fails to teach abutting items, and in particular abutting items that have no gaps or are in contact with each other. The Examiner relies on a drawing that is not drawn to scale and which has numerous drafting errors for his conclusion that the reference teaches the cited features, although discussion in the disclosure supports such a conclusion.

Nevertheless, as also discussed at the personal interview, even if the drawing shows items that are in contact with each other, the reference fails to teach any means of detecting that boundary condition when they are in contact (the one means of detecting the start/end of the items disclosed in the reference, utilizing sensors 60 and 62, would not work if there were no “gap” between the items). Furthermore, as discussed at the personal interview, the reference fails to teach any method of detecting the boundary between items by comparing differences between different sets of data.

Accordingly, as also discussed at the personal interview, the independent claims have been amended to recite such a feature of using the difference between data sets to detect the boundaries, and thus they are patentable over Whitehouse, and the remaining references as well. Furthermore, claims 38, 81, 90, and 91 recite the determination of differences in much more detail, as also discussed at the personal interview, and thus are also patentable over the references for this reason as well. The remaining claims, which depend on one or more of the independent claims, are thus also patentable over the references.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. SCAN1-41081.

Respectfully submitted,
PEARNE & GORDON, LLP

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By: / Robert F. Bodi /
Robert F. Bodi, Reg. No. 48,540

1801 East Ninth Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700